

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-151

November 14, 2003

PUBLIC UTILITIES COMMISSION
Investigation into the Adequacy of Utility Services
in Maine During Power Outages

ORDER

Welch, Chairman, Diamond and Reishus, Commissioners

I. SUMMARY

In this Order, we adopt, with modification, the Recommendations contained in the August 29, 2003 Examiner's Report.

II. BACKGROUND

On January 13, 2003, a Winter Storm with heavy snow, strong winds, mixtures of snow and rain, blowing and drifting snow and near blizzard conditions hit southern, central and especially, mid-coast Maine. The storm continued through Sunday night/Monday morning and exited the area by Monday afternoon. A large portion of customers in the affected area lost electric and telephone service due to downed poles and wires, with the loss of power causing ripple impacts on the telephone system. Service was interrupted for over a week to some customers, and the area's largest utilities (CMP, BHE and Verizon) reported outage durations of more than 24 hours to a significant number of customers.¹ While we do not have exact numbers of outages, we estimate that approximately 60,000 CMP customers, 10,000 BHE customers, and 11,750 Verizon customers experienced some sort of outage during the Storm.

During and after the Storm, local, county and State emergency management officials complained to the Commission that they had a very difficult time contacting utilities and obtaining timely information during the Storm. Further, they were troubled about the duration of the outages in many areas. We were concerned about these reports from emergency management officials because similar problems had arisen during the Ice Storm of 1998 and we thought we had addressed many of these issues with our Order in Docket No. 98-026, *Inquiry into the Response by Public Utilities in Maine to the January 1998 Ice Storm*, (Dec. 29, 1998).

¹CMP's average customer outage lasted 23.92 hours, with its longest outage reported as 193 hours. For BHE, its average outage reported was 44 hours, and its longest reported outage was 146 hours. Eastern Maine Electric Cooperative reported an average outage of 7 hours and a longest outage of 47 hours. Seven local exchange carriers reported outage durations ranging from 2 hours for Lincolnville Telephone Company to 246 hours for Verizon.

The Ice Storm of 1998 caused electric and telephone outages impacting over half the citizens of the State of Maine. After considerable time and investigation, we issued a comprehensive order that detailed problems that we found with the utilities' responses to the Storm and that provided recommendations for improvements that utilities needed to undertake. We found that the Ice Storm overwhelmed most utilities' emergency plans and that the utilities were forced to improvise in situations where their plans failed to provide adequate guidance. We made specific recommendations covering a broad range of areas with the hope that all utilities would voluntarily implement the measures to ensure a swifter and more effective response to future storms. It appears, based upon the response during Winter Storm 2002, that many of our previous recommendations had not been fully implemented by Maine's utilities.

III. LEGAL STANDARD AND PROCEDURAL HISTORY

The basic purpose of regulation by the Public Utilities Commission is to assure safe, reasonable and adequate service at rates which are just and reasonable to customers and public utilities. 35-A M.R.S.A. § 101. Maine law further requires that "[e]very public utility shall furnish safe, reasonable and adequate facilities and service." 35-A M.R.S.A. § 301(1). The Commission "may on its own motion, with or without notice, summarily investigate . . . any matter relating to a public utility . . ." 35-A M.R.S.A. § 1303(1)(C). The Commission may also conduct a subsequent formal investigation if, after the summary investigation, the Commission finds sufficient grounds exist. 35-A M.R.S.A. § 1303(2).

Thus, on March 26, 2002, we opened this Investigation pursuant to 35-A M.R.S.A. § 1303 into the adequacy of public utility services during and after Winter Storm 2002. We initiated this Investigation to determine the adequacy of utility services during events that interrupt electric power service, and in particular, the adequacy of telephone service during power outages.

In our Notice of Investigation, we specifically stated our intent to focus on the adequacy and effectiveness of telephone equipment batteries, other backup power supplies for both telephone and other utilities, power restoration plans, and ways to improve service. We indicated that we would assess how effectively Maine telephone and electric utilities are working together to coordinate restoration of power to susceptible facilities, and that we would examine communications between those utilities and emergency management officials. Because the footprint of the Storm did not cover the entire state, we limited the scope of this investigation to the nine Maine counties in which the storm had the greatest effect, and the public utilities operating within those counties. The Commission Advisory Staff conducted written discovery of utilities in the affected areas and held five Technical Conferences at which additional oral discovery was conducted.²

²Verizon on July 18 and November 15, 2002; Central Maine Power Company (CMP) on November 7, 2002; Bangor Hydro-Electric Company (BHE) on November 21, 2002; and emergency management officials, Verizon, BHE, and CMP on December 18, 2002.

The Hearing Examiner issued an Examiner's Report on August 29, 2003. On that date, the Hearing Examiner advised all parties that they could contest any issue of fact or request an opportunity to present further materials or evidence in their Exceptions, for which the Hearing Examiner set September 30, 2003 as the filing deadline.

On September 10, 2003, CMP filed a request to conduct discovery on the Examiner's Report and to extend the deadline for filing Exceptions in order to ascertain the factual basis for certain statements in the Examiner's Report. Because the Advisory Staff had not relied upon facts not otherwise in the record, the Hearing Examiner denied CMP's request to conduct formal discovery, but provided CMP with an opportunity to request record references for factual assertions in the Examiner's Report. To accommodate that process, the Hearing Examiner extended the due date for Exceptions until October 10, 2003.

On September 18, 2003, CMP filed a record reference request seeking the basis of certain statements in the Examiner's Report. On September 24, 2003, the Advisory Staff responded to CMP's request.

On October 2, 2003, CMP filed a request for a further one-week extension of the deadline for Exceptions because of the unavailability of a key CMP individual. The Hearing Examiner granted all parties an extension of that deadline until October 15, 2003.

On October 15, 2003, Verizon filed a request for an additional one-week extension of the Exceptions. The Hearing Examiner granted Verizon's request and extended the deadline for all parties to file exceptions until noon on October 22, 2003.

Exceptions and comments were timely filed by Waldo County Commissioner John M. Hyk, the Maine Emergency Management Agency (MEMA), the Public Advocate, CMP, and Verizon Maine. BHE filed no objections to the Report.

Commissioner Hyk concurred with the Examiner's Report, and offered one recommendation that Verizon report power outage data to CMP to improve the electric utility's ability to rapidly assess the extent of an outage. MEMA offered supportive comments on a number of points raised in the Examiner's Report. The OPA supported the Examiner's Report and suggested it "will serve as a useful reference for future cases involving a review or investigation of utility responses to storm outages." The OPA recommended a minor change to one of the Examiner's Report requirements to incorporate a specific filing date for that recommendation.

CMP took exception to the process used by the Advisors to reach their conclusions but supported the specific recommendations made by the Advisors. CMP specifically complained that it expected that the Advisors would issue a bench analysis rather than an examiner's report and that it would have the opportunity for further

discussion with the Advisors. Ultimately, CMP disagreed with the Advisors' characterization of the facts relating to its restoration performance during the January 2002 Storm; CMP believes that it was prepared for and responded well to the Storm. CMP also believes that it did not miscategorize the storm and that the lower categorization did not adversely impact how CMP responded to the storm or the timing of restoration efforts. CMP's one exception to Staff's recommendations, which relates to self-assessments, will be discussed in detail below.

Verizon's Exceptions focused on: Verizon's assessment of the likely impact of the Ice Storm; its preparation for the Storm; its restoration of services and facilities the Storm affected; and its communications during the Storm with power companies and the Commission. Verizon claimed that the telephone outages were not as extensive as estimated in the Examiner's Report and that the cause of the outages was not solely the loss of commercial power. Verizon also claimed that it acted swiftly to ensure that digital loop carriers (DLC) did not lose power, disputed the Examiner's conclusion that many DLCs did lose power, and argued that it gives DLC restoration sufficient priority. Finally, Verizon asserted that its communications with other utilities was sufficient, disagreed with the Examiner's interpretation of Chapter 20, and complained about the process used in the case.

IV. DECISION

A. Analysis

After consideration of both the Examiner's Report and the parties' Exceptions, we find that adoption of the Advisors' Recommendations (i.e., the proposed ordering paragraphs, with the few modifications discussed below) without specifically adopting the Examiner's Report is the best way for the Commission to proceed in this case. First, we believe it is important for both the utilities and the public that the Commission review how utilities respond to storms and handle emergency restoration and that the Commission identify areas of deficiency or patterns of substandard performance. The public expects that the Commission, with its oversight of utility operations and practices, will intervene when necessary to protect the public from avoidable delays in restoration of essential utility services. While it may not be necessary in this case to assign specific blame for the delayed restoration experienced during the January 2002 Winter Storm, it is necessary for the Commission to ensure that utilities take certain steps to avoid future delays to the extent possible. We find this particularly important because many of the Advisors' Recommendations are similar to recommendations we offered – but did not order – in our *1998 Ice Storm Order*, recommendations that utilities did not implement.

We disagree with the argument of some utilities that the utilities' objectives are identical to those of customers or the Commission. Indeed, while price caps and alternate forms of regulation may create incentives for efficiency, they may also create the temptation to cut back on resources that may be needed during storm or emergency situations. Thus, continuing regulatory oversight remains important; not for the purpose

of “micro-managing” utilities, but to ensure that utilities do not systematically “give in” to the temptation to allocate resources away from service restoration priorities.

With regard to the process that was used in this case, we note that the utilities were given several opportunities to provide the Commission with factual information concerning their restoration performance – both during the discovery and technical conference phase, as well as during the seven-week exceptions period. While in hindsight we might agree that additional process may have been helpful, we believe the record in this proceeding supports the ordering paragraphs we adopt today. We note that while Verizon and CMP argued that the process used was flawed, Verizon took no issue with the specific recommendations made by the Advisors and CMP took issue with only one.

We do not think it would benefit any party to spend a great deal of additional time adjudicating the specific facts associated with this case. Instead, we will adopt, with the modifications discussed below, the recommendations contained in the Examiner’s Report and direct Staff to assemble and file in this docket a “Final Report” to consist of a Staff Report (the Hearing Examiner’s Report modified to reflect any Staff changes based on the Exceptions as well as the format change from Draft Order to Staff Report), the parties’ Exceptions, and any additional comments from the parties.

B. Modifications and Additions to the Advisors’ Recommendations

The parties offered a number of substantive comments on the Advisors’ Recommendations, which we discuss below.

In its Exceptions, CMP suggests that written self-assessments be provided to the Commission only “upon request from the Commission under appropriate protective order.” CMP states that it has no objection “to reviewing its performance and preparing a written assessment after significant storms.” CMP suggests, however, that “the self-evaluation of utility actions should be encouraged and [treated as] protected discovery in litigated matters as a matter of public policy.” We take issue with CMP’s comments that it will not investigate its own restoration performance if it risks being “punished” by a Commission review that takes into consideration the utility’s own self-assessment. CMP has a duty to provide safe service and a duty to undertake whatever self-examination is necessary to ensure that it provides such safe service. Any failure to undertake both of these duties will be viewed as a serious breach of CMP’s obligations.

CMP’s suggestion that we require it to provide self-assessment reports only on request is reasonable. We do not intend to scrutinize utility performance closely during all storm events, particularly if the utility has a performance-based measurement plan in effect. We do not find it reasonable to presumptively consider all self-assessments proprietary. Further, we do not think it appropriate for us to authorize a public utility in advance to conceal its shortcomings, while it retains the freedom to

publish its triumphs. Thus, we do not adopt that portion of CMP's suggestion, preferring instead to treat requests for protective orders on a case-by-case basis.

Waldo County Commissioner Hyk made a recommendation in his Exceptions that we believe would be very useful to Maine T&D utilities and to MEMA. Local Exchange Carriers have timely information about local power outages because of DLC alarm data, which he characterized as "a canary in a coal mine." Commissioner Hyk suggested that such information could help T&D utilities assess the extent of outages, and help emergency managers evaluate the magnitude of a power emergency, more quickly and effectively. MEMA made a similar recommendation in its Exceptions. Although Commissioner Hyk suggested that Verizon report such DLC power alarm data to CMP, we see no reason why this approach should apply only to CMP, as we believe it would benefit all T&D utilities. We thus order that Verizon to arrange to provide all T&D utilities in Maine with such data about alarms reflecting power failures in their respective service areas.

Although coordination agreements between utilities and county emergency management agencies were discussed among those parties during Technical Conferences, MEMA's Exceptions state that it subsequently has observed "little effort" expended toward that effort. The Examiner's Report includes a requirement for Verizon to file such coordination agreements with the Commission and a requirement that CMP file a report on extended outage notification procedures related to emergency management personnel. The Examiner's Report does not explicitly require that utilities actually negotiate such agreements. To reflect MEMA's concern and ensure that necessary coordination is in place, we clarify the filing requirement to require that Verizon, CMP, and BHE negotiate and file such emergency coordination agreements with all county emergency management agencies.

The Public Advocate suggests that we set a date certain for Verizon to file detailed emergency plans as recommended in the Examiner's Report. We agree that a specific date would be useful and order Verizon to prepare or update, and file, such plans within six months after the date of this Order.

We accordingly adopt the recommendations contained in the Examiner's Report in this proceeding, modified to reflect the parties' Exceptions as discussed above.

V. ORDERING PARAGRAPHS

For the reasons discussed in Section IV above, we order the following:

Verizon shall:

1. Improve its ability to staff-up more quickly and assign personnel to manage DLC back-up power during storms and other emergencies.

2. Develop detailed emergency response plans to provide operational guidance during future emergencies, and maintain a current copy of all such plans at the Commission. Verizon shall prepare or update, and file, such plans within six months of this Order.
3. Review and test emergency plans annually through drills that involve personnel who would have responsibility for management of future emergencies in Maine, and provide the Commission with evaluations of those drills.
4. Make proactive contact with both MEMA and county EMAs during emergencies and widespread, multi-day outages.
5. Communicate detailed information concerning outages, the expected duration of outages, and restoration priorities to MEMA and county EMAs, and copy the Commission on all such communications.
6. Negotiate emergency coordination agreements with all county emergency management agencies in its service territory and file with the Commission copies of these agreements and of letters providing detailed contact information for Verizon to be used during outages and emergencies.
7. Reach agreements with all T&D utilities in its service area concerning how, at what levels, and through what specific channels communication will take place during storm and emergency situations, and file copies of those agreements with the Commission within 90 days of this Order.
8. File a report with the Commission within 90 days of this Order describing actions taken to comply with the Commission's *1998 Ice Storm Order*.
9. File a plan covering all DLCs in Maine which provides for managing DLC back-up power maintenance restoration such that customers served by DLCs do not lose service solely due to a lack of commercial power.
10. Begin collecting DLC outage data (number of customers losing service) with the ultimate goal of combining it with the Network Trouble Report and Service Outage data sources when we next reset those SQL metrics' performance baselines.
11. Report all outages that meet Chapter 20's criteria, i.e. any outage that affects at least 500 lines for at least five minutes in *any* part of Verizon's service territory.
12. Make the necessary changes in its Chapter 20 outage data gathering and reporting such that if DLC customer outages are reportable under Chapter 20 or cause an outage event to be reportable, the number of DLC

customers out of service for over five minutes must be accounted for in Chapter 20 outage reports.

13. File a revised priority matrix within 90 days of this Order which: (a) gives customers of out-of-service DLCs higher service restoration priorities than they have under the existing system based on the order in which customer trouble reports are received; (b) gives out of service residential customers priority over new installations for business customers during a storm or emergency events; and (c) gives restoration of service to other utilities a specific high priority position on the matrix.
14. Develop a policy that will direct its employees during extended outages to retain, for one year, spreadsheets and work papers that contain data on DLC power losses, outages, outage durations, and outage locations, unless Verizon can make such data readily available from other sources.
15. Make the upkeep of alternate power to its DLC systems a priority by permanently assigning personnel to coordinate back-up power maintenance for particular geographic areas.
16. Develop and file with the Commission within 120 days of this Order, written documentation and procedures which provide the current location of all available generators by county (or other reasonable geographic subdivision) and which suggest possible rotations of generators if all commercial power is lost in the geographic area.
17. Purchase any additional generators needed in order to ensure a feasible generator rotation plan within 150 days of this Order.
18. Develop a policy that requires a formal assessment of its performance in restoring services, in maintaining power to DLCs, and in managing the personnel and resources that support those activities for all widespread, multi-day outage events.
19. Complete any required assessment within 90 days after the event and file it with the Commission upon request.
20. Arrange to provide all T&D utilities in Maine with data about alarms reflecting power failures in their respective service areas.

CMP shall:

21. Develop specific guidelines for unusual weather conditions within a weather report or alert that would prompt action within their emergency response plans.

22. Initiate a plan for documenting decisions made for any pre-storm preparations as a result of weather reports (alerts) that fall within set guidelines.
23. Incorporate a procedure within its ESRP for disseminating extraordinary weather reports (alerts) to essential personnel on a 24-hour schedule, seven days a week.
24. File a report with the Commission within 90 days of this Order describing actions taken to comply with the Commission's *1998 Ice Storm Order*.
25. File a report with the Commission within 90 days of this Order describing what additional steps or additional triggers might be taken or put in place to assure proper notification of extended outages to emergency management personnel.
26. Negotiate and file with the Commission emergency coordination agreements with all county emergency management agencies in its service territory.
27. Develop and file with the Commission a comprehensive Restoration Information Plan within 90 days of this Order.
28. Take all necessary steps to assure compliance with the outage notice requirements contained in Section 7(C) of Chapter 81 in unplanned outage situations involving customers with pre-existing medical emergencies or that have life support designations.
29. Establish a formal communication process with other utilities for each level of storm or emergency, including e-mail communications procedures as well as radio, cellular and telephone communications procedures and file the plan within 90 days of this Order.
30. File a report with the Commission within 90 days of this Order specifying what steps it has taken to improve its systems to be able to provide the necessary information to comply with the reporting protocol for Chapter 130. The report should also specify who at CMP will be responsible for contact with the Commission and provide contact information (telephone, mobile phone, and pager numbers).
31. Review its ESRP to ensure that its procedures fully address emergency (storm) conditions requiring emergency outage restoration. If, during a particular future storm or emergency event, CMP elects to substantially deviate from its ESRP, it must document the reasons for the deviation and make the documentation available to the Commission upon request.

32. File a report with the Commission within 90 days of this Order outlining a process for tracking and monitoring crew deployment.
33. Conduct an internal assessment of all Level 2 and Level 3 storms and provide a copy of that written assessment to the Commission upon request.

BHE shall:

34. Develop specific guidelines for unusual weather conditions within a weather report or alert that would prompt action under its emergency response plan.
35. Initiate a plan for documenting decisions made for any pre-storm preparations as a result of weather reports (alerts) that fall within set guidelines.
36. File a report with the Commission within 90 days of this Order describing actions taken to comply with the Commission's *1998 Ice Storm Order*.
37. Report to the Commission within 90 days of this Order on what changes it has made or intends to make to improve its phone system and eliminate call volume limitations.
38. Develop and submit to the Commission a comprehensive Restoration Information Plan within 90 days of this Order.
39. Take all necessary steps to assure compliance with the outage notice requirements contained in Section 7(C) of Chapter 81 in unplanned outage situations involving customers with pre-existing medical emergencies or that have life support designations.
40. Establish a formal communication process with other utilities for each level of storm or emergency, including e-mail communications procedures as well as radio, cellular and telephone communications procedures and file the plan with the Commission within 90 days of this Order.
41. Develop a formal damage assessment plan within its ERP and file the plan with the Commission within 60 days of this Order.
42. File a report with the Commission within 60 days of this Order outlining the improvements it will make in handling callbacks to customers for populating outage records on the Power On System.
43. File a report with the Commission within 90 days of this Order outlining a process for tracking and monitoring crew deployment.

44. Conduct an internal assessment of all Level 2 and Level 3 storms and provide a copy of that written assessment to the Commission upon request.
45. Negotiate and file with the Commission emergency coordination agreements with all county emergency management agencies in its service territory.

Dated at Augusta, Maine, this 14th day of November, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.